



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/754,785	01/04/2001	Pierre-Alain Darlet	11283/35	3238

26646 7590 11/13/2003

KENYON & KENYON
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER

KISS, ERIC B

ART UNIT	PAPER NUMBER
----------	--------------

2122

9

DATE MAILED: 11/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

p2c

Office Action Summary	Application No.	Applicant(s)	
	09/754,785	DARLET, PIERRE-ALAIN	
	Examiner	Art Unit	
	Eric B. Kiss	2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 6, 7, 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-39 have been examined.

Information Disclosure Statement

2. The information disclosure statement filed April 23, 2001, fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because each publication listed in an information disclosure statement must be identified by publisher, author (if any), title, relevant pages of the publication, date, and place of publication (see 37 CFR 1.98(b)(5)). It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

3. The information disclosure statement filed January 31, 2002, fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has

Art Unit: 2122

been placed in the application file, but the information referred to therein has not been considered.

4. The information disclosure statement filed February 19, 2002, fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because each publication listed in an information disclosure statement must be identified by publisher, author (if any), title, relevant pages of the publication, date, and place of publication (see 37 CFR 1.98(b)(5)). It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 36 and 37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claims 36 and 37, merely claimed as a computer program representing a computer listing *per se*, that is, descriptions or expressions of such a program and that is, descriptive material *per se*, non-functional descriptive material, and is not statutory because it is not a physical “thing” nor a statutory process, as there are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed aspects of the invention which permit the computer program’s functionality to be realized. Since a computer program is merely a set of instructions capable of being executed by a computer, the program itself is not a process, without the computer-readable medium needed to realize the computer program’s functionality. In contrast, a claimed computer-readable medium encoded with a computer program defines structural and functional interrelationships between the computer program and the medium which permit the computer program’s functionality to be realized, and is thus statutory. **Warmerdam**, 33 F.3d at 1361, 31 USPQ2d at 1760. **In re Sarkar**, 588 F.2d 1330, 1333, 200 USPQ 132, 137 (CCPA 1978). See MPEP § 2106(IV)(B)(1)(a).

7. To expedite a complete examination of the instant application, the claims rejected under 35 U.S.C. §101 (non-statutory) above are further rejected as set forth below in anticipation of Applicant amending these claims to place them within the four statutory categories of invention.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. Claims 1-39 rejected under 35 U.S.C. 102(a) as being anticipated by BRYANT & O'HALLARON, "Doc. 15-213 Handout #3 Linking" (hereinafter BRYANT & O'HALLARON).

As per claim 1, BRYANT & O'HALLARON teach and/or disclose a linking process of a typical linker (See page 1), which including and/or covering method of: "receiving a software module ... references being backward references" (E.g., see Fig. 15 & at page 24, under How linkers use libraries for symbol resolution section, 2nd para. states "For each input file f on the command line, the linker determines if f is an object file or an archive backward reference"); and "reordering ... to remove at least some of the backward references" (E.g., again see page 24, 3rd para. states "If f is an archive... If some archive member, m, defines a symbol that resolves a reference in U, then m is added to E (reordering), and the linker updates (adjusts) U and D to reflect the symbol definitions... At this point, any member object files not contained in E are simply discarded (removed) and the linker proceeds to the next input file").

As per claims 2-6, BRYANT & O'HALLARON also teach and/or disclose such claimed limitations as "adjusting" (See noted above), "symbol table" & "ELF format" (See Fig. 3 at page 6 & associated text).

As per claims 7-8, BRYANT & O'HALLARON also teach and/or disclose such claimed limitations as "segment... section" & "relocatable object code module in ELF format" (E.g., again see Fig. 3 at a page 6 & associated text).

As per claims 9-15, this is an apparatus version of the claimed method discussed above, claims 1-8, wherein means for performing such method steps are deemed to be inherent in the features and/or functions of known systems such as UNIX, Windows NT, Linux, etc (See page 5 at bottom para.).

As per claims 16-22, this is another method version of the claimed method discussed above, claims 1-8, in which BRYANT & O'HALLARON also teach and/or disclose: "loading the software module into a target memory space" (E.g., see Fig. 8, 8-Executable object files & 9-Loading sections at pages 14-18); and "resolving... symbol reference without storing the entire software module..." (E.g., see 10-How linkers resolve multiply-defined global symbols section at pages 18-21, while at page 16, 1st para. under Loading section, states "the loader does not actually copy the code and data sections of the executable into memory. Instead, it creates the necessary virtual memory segments and maps portions of the executable file to these segments...").

As per claims 23-35, this is another apparatus version of the claimed apparatus discussed above, claims 9-15, in which BRYANT & O'HALLARON also teach and/or disclose with such a

Art Unit: 2122

"linker" (E.g., see 11-Linking with static libraries & 12-Dynamic linking with shared libraries sections at pages 21-27, Figs. 15-16 & associated text, and wherein page 21, 1st para. under section 11, states "the linker copies only the object files in the library that are referenced by the application program" and moreover at page 22, 4th para., states "At link-time, the linker will only copy the object files that are referenced by the program, which reduces the size of the executable on disk and in memory").

As per claims 36 & 37, as being treated as a system comprising a software module such as in claim 36, which is another apparatus version of the claimed apparatus discussed above, claims 9-15, wherein all claimed limitations also have been addressed and/or covered as set forth above.

As per claims 38 & 39, these are product versions of the claimed methods discussed above, claims 1 & 16, respectively, and wherein all claimed limitations are also have been addressed and/or covered as set forth above.

Conclusion


10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric B. Kiss whose telephone number is (703) 305-7737. The Examiner can normally be reached on Tue. - Fri., 7:30 am - 5:00 pm. The Examiner can also be reached on alternate Mondays.

Art Unit: 2122

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Tuan Dam, can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

EBK
November 5, 2003



TUAN DAM
SUPERVISORY PATENT EXAMINER